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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/816,918	03/23/2001	Joseph Kaminsky	03551-P0001A	6092
24126	7590	10/22/2003	EXAMINER	
ST. ONGE STEWARD JOHNSTON & REENS, LLC			LUGO, CARLOS	
986 BEDFORD STREET				
STAMFORD, CT 06905-5619			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 10/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/816,918	KAMINSKY ET AL.
Examiner	Art Unit	
Carlos Lugo	3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 25 July 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-30 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 23 March 2001 and 25 July 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

1. This Office Action is in response to applicant's amendment filed on July 25, 2003.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) The invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claims 1-8,11,15,18 and 20-30 are rejected** under 35 U.S.C. 102(e) as being anticipated by US Pat No 6,604,089 to Van Horn et al (Van Horn).

Regarding claim 1, Van Horn discloses a dynamic pricing marketing and sales system comprising an inventory sales tool (Web Page) accessible to a plurality of buyers through at least one medium.

The inventory sales tool is effective to provide an indication of an available quantity of an item and a plurality of pricing schemes (either buy it at current price or demand a price, Col. 11 Line 54 to Col. 12 Line 27).

At least one of said pricing schemes permits at least one of said buyers to request an immediate purchase at an immediate purchase price (Col. 11 Lines 54 to Col. 12 Line 15).

The immediate purchase price conditionally decreases over time (depending of the price curve, Col. 12 Lines 10-15).

At least one of said pricing schemes permits at least one of said buyers to request a deferred purchase when a user-defined deferred purchase price matches a decreased immediate purchase price (Col. 12 Lines 10-15).

As to claims 2 and 20-24, Van Horn discloses that the medium is the Internet (e-commerce, Col. 1 Lines 7-10).

As to claim 3, Van Horn discloses that the system further comprises a buyer selectable shopping channels (38) that permit the buyer access to the inventory items based on a type of merchandise (Col. 11 Lines 36-50).

As to claim 4, Van Horn discloses that the immediate purchase price decrease when no purchase requests are made for the product (Figures 6 and 7).

As to claim 5, Van Horn illustrates that the immediate purchase price increases a specified amount when an immediate purchase is made (the purchases or biddings of the buyers affect the pricing curve, Figures 6 and 7).

As to claim 6, Van Horn discloses that the indication is effective to provide information related to purchase by all of the buyers (Col.11 Lines 15-34).

As to claim 7, Van Horn discloses that the item is made available for a limited duration of time (starting and ending time, Col. 11 Lines 15-34).

As to claim 8, Van Horn discloses that the immediate purchase price can fluctuate (price curve, Figures 6 and 7).

As to claim 11, Van Horn discloses that wherein a filled immediate purchase, it will decrease the available quantity of the item.

As to claim 15, Van Horn discloses that the sell sets a minimum immediate purchase price (starting price, Col. 11 Lines 15-34).

As to claim 18, Van Horn discloses that the inventory items are composed of excess inventory (any type of good or service).

As to claims 25-30, Van Horn discloses that the system further includes an indication showing the buyer purchase (Col. 12 Line 25).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. **Claims 9,10,13 and 16 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 6,604,089 to Van Horn et al (Van Horn) in view of US Pat No 6,434,536 to Geiger.

Regarding claims 9 and 16, Van Horn fails to disclose that the inventory sales tool includes a lot price containing a specified quantity of items and that the lot price and the specified quantity determine an average price for each item of the lot.

Van Horn discloses that the items are sold individually and that the deferred purchase request includes a demand purchase request made by a first buyer.

Geiger illustrates an inventory sales tool that includes a lot price containing a specified quantity of items (hard drives) and that the lot price and the specified quantity determine an average price for each item of the lot (Figures 12-14).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a sale tool, as taught by Geiger, into an inventory sales tool as described by Van Horn, in order to be able to sale a large quantity of an item at a reasonable price.

As to claim 10, Van Horn discloses that more than one buyer can try to obtain an item by a deferred purchase (Offers below the Current Price, Col. 11 Line 54 to Col. 12 Line 15).

As to claim 13, Van Horn discloses that the seller sets the price (Col. 11 Lines 15-34).

6. **Claims 1-3,6,7,11,12,14,15,18 and 20-30 are rejected** under 35 U.S.C. 103(a) as being unpatentable over Egghead.com (Egghead) in view of US Pat No 6,604,089 to Van Horn et al (Van Horn).

Regarding claim 1, Egghead discloses a dynamic pricing marketing and sales system comprising an inventory sales tool (Web Page) accessible to a plurality of buyers through at least one medium (internet).

The inventory sales tool is effective to provide an indication of an available quantity of an item and a plurality of pricing schemes (Place an order to buy the item at a price or place a bid, sections "how to shop" and "auction bidding guide").

At least one of said pricing schemes permits at least one of said buyers to request an immediate purchase at an immediate purchase price (Place an Order).

At least one of said pricing schemes permits at least one of said buyers to request a deferred purchase at a deferred purchase price (Bidding Process).

However, Egghead fails to disclose that the immediate purchase price conditionally decreases over time and that at least one of said pricing schemes permits at least one of said buyers to request a deferred purchase when a user-defined deferred purchase price matches a decreased immediate purchase price.

Van horn teaches that is known in the art to have a pricing curve that will affect the current price (pricing curve, Figures 6 and 7) and that at least one of said buyers to request a deferred purchase when a user-defined deferred purchase price matches a decreased immediate purchase price (Col. 12 Lines 10-15).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a pricing curve, as taught by Van Horn, into a website as described by Egghead, in order to give the opportunity to the buyer to purchase products at a lower price.

As to claims 2 and 20-24, Egghead discloses that the medium is the Internet.

As to claim 3, Egghead discloses that the system further comprises a buyer selectable shopping channels (Superstores) that permits the buyer access to the inventory items based on a type of merchandise.

As to claim 6, Egghead discloses that the indication is effective to provide information related to purchase by all of the buyers (See "Check current Bid" section).

As to claim 7, Egghead discloses that the item is made available for a limited duration of time (see Auction Types in section "Auction Bidding Guide").

As to claim 11, Egghead discloses that wherein a filled immediate purchase, it will decrease the available quantity of the item.

As to claim 12, Egghead discloses that the inventory sales tool includes a minimum auction price. The deferred purchase request includes an auction purchase request that includes a bid purchase price (section "Auction Bidding Guide).

The auction purchase request is filled if the bid purchase price is not less than the minimum auction price and the bid purchase price is greater or equal to any other bid purchase price submitted for a like quantity of items (See "Check current Bid" section).

As to claim 14, Egghead discloses that the seller sets the minimum auction price and a bid purchase price increment (see Check Current Bids on section "Auction Bidding Guide).

As to claim 15, Egghead discloses that the sell sets a minimum immediate purchase price (see Check Current Bids on section "Auction Bidding Guide).

As to claim 18, Egghead discloses that the inventory items are composed of excess inventory (see section "About Us").

As to claims 25-30, Egghead discloses that the system further includes an indication showing the buyer purchase (by email).

7. **Claims 9,10,13,16,17 and 19 are rejected** under 35 U.S.C. 103(a) as being unpatentable over Egghead.com (Egghead) in view of US Pat No 6,604,089 to Van Horn et al (Van Horn) and further in view of US Pat No 6,434,536 to Geiger.

Regarding claims 9 and 16, Egghead, as modified by Van Horn, fails to disclose that the inventory sales tool includes a lot price containing a specified quantity of items and that the lot price and the specified quantity determine an average price for each item of the lot.

Egghead discloses that the items are sold by the quantity that the buyer wants and that the deferred purchase request includes a demand purchase request made by a first buyer.

Geiger illustrates an inventory sales tool that includes a lot price containing a specified quantity of items (hard drives) and that the lot price and the specified quantity determine an average price for each item of the lot (Figures 12-14).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a sale tool, as taught by Geiger, into an inventory sales tool as described by Egghead, in order to be able to sale a large quantity of an item at a reasonable price.

As to claim 10, Egghead discloses that more than one buyer can try to obtain an item by a deferred purchase (placing a bid, see section "Auction Bidding Guide").

As to claim 13, Egghead discloses that the seller sets the price (see Check Current Bids on section "Auction Bidding Guide").

As to claim 17, Egghead discloses that the deferred purchase request includes an auction purchase request (see section "Auction Bidding Guide").

As to claim 19, Egghead discloses that the inventory items are composed of excess inventory (Col. 4 Lines 12 and 13).

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lugo whose telephone number is 703-305-9747. The examiner can normally be reached on 9-6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

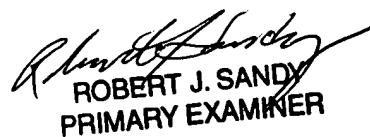
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

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Carlos Lugo  
Examiner  
Art Unit 3677

October 6, 2003.



ROBERT J. SANDY  
PRIMARY EXAMINER